Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT: ATTORNEYS FOR APPELLEE:

MARCE GONZALEZ, JR. STEVE CARTER

Merrillville, Indiana Attorney General of Indiana

SCOTT L. BARNHART Deputy Attorney General Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

KEITH CURTIS SPENCER, JR.,)
Appellant-Defendant,)
vs.) No. 45A03-0612-CR-618
STATE OF INDIANA,)
Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT CRIMINAL DIVISION, ROOM III The Honorable Diane Ross Boswell, Judge Cause No. 45G03-0402-FA-6

September 27, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Keith Curtis Spencer, Jr. (Spencer), appeals his conviction for dealing in cocaine, a Class A felony, Ind. Code § 35-48-4-1(a)(1)(b)(3)(B)(iv).

We affirm.

ISSUE

Spencer raises one issue on appeal, which we restate as follows: Whether the trial court properly sentenced Spencer in light of the nature of his offense and his character.

FACTS AND PROCEDURAL HISTORY

On December 2, 2003, while conducting surveillance at an intersection in Gary, Indiana, Gary Police Department officers observed Spencer near a residence at 4120 Adams Street. At approximately 3:00 p.m., a confidential informant for the Gary Police Department purchased forty dollars of crack cocaine from Spencer behind a bush in front of the aforementioned residence, which was also within one thousand feet of a day care center.

On February 4, 2004, the State filed an Information charging Spencer with Count I, dealing in cocaine, a Class A felony, I.C. § 35-48-4-1(a)(1)(b)(3)(B)(iv). June 5-9, 2006, a jury trial was held wherein the jury found Spencer guilty as charged. On November 22, 2006, at a sentencing hearing, the trial court found Spencer's youthful age of twenty-three to be a mitigating factor, and his prior juvenile record and criminal history, along with his

recent violations of pretrial release, as aggravating factors before sentencing him to the thirty-year presumptive sentence.¹

Spencer now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Spencer contends that his sentence is inappropriate in light of the nature of his offense and character. Specifically, Spencer argues that lack of violence, the nominal amount of the buy, that the informant benefited from his arrest, and his character compared with those who testified against him at trial make his thirty-year sentence inappropriate.

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. App. R. 7(B). With respect to the nature of the offense, Spencer argues he is not among the worst of the worst offenders because of (1) the low purchase price of the cocaine (forty dollars), (2) the lack of violence associated with the buy, and (3) "the confidential informant was able to easily complete this transaction to enrich his personal coffers." (Appellant Brief p. 5). However, Spencer offers no support or comparison to case law furthering his

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¹ Spencer committed the instant offense on December 2, 2003, before the advisory sentence language took effect. *See* Public Law 71-2005 (abolishing "presumptive sentences" in favor of "advisory sentences"). Thus, we will refer to Spencer's sentence as the presumptive penalty for Class A felonies.

argument.² Thus Spencer has not persuaded us the trial court's imposition of the presumptive sentence is inappropriate. We find nothing warranting a lesser sentence with respect to the nature of this offense.

Additionally, Spencer argues his character compared to that of the witness who testified against him makes him deserving of a lesser sentence. Our review under Ind. App. R. 7(B) is not a comparison of the defendant in a particular case to the character of witnesses who testify against him or her. Rather, we evaluate the character of the defendant with respect to the appropriateness, or inappropriateness, of the sentence imposed by the trial court.

In this case, we find the trial court sentenced Spencer to the presumptive term of thirty years. After reviewing the relevant aggravating and mitigating circumstances, the trial court concluded that the presumptive sentence was appropriate. We agree. While Spencer was only twenty-three years old when he committed the instant offense, he has also amassed a juvenile record consisting of criminal trespass (twice), receiving stolen parts, resisting law enforcement, battery, and theft, and has a misdemeanor adult conviction for operating while intoxicated/endangering a person. Additionally, he was arrested during his pretrial release and has charges pending, as a result. As such, we cannot conclude that a sentence equal to the presumptive is inappropriate with respect to Spencer's character.

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² See Ind. Appellate Rule 46(8)(a).

CONCLUSION

Based on the foregoing, we find the thirty-year sentence imposed by the trial court is not inappropriate.

Affirmed.

SHARPNACK, J. and FRIEDLANDER, J., concur.